# National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991

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Cardinal Health Care, Inc. (22-RC-12773; 352 NLRB No. 19) Edison, NJ Feb. 15, 2008. The Board, applying the three-part test articulated in Caesar's Tahoe, 337 NLRB 1096, 1097 (2002), held that two electronic data interchange (EDI) coordinators and an inventory coordinator were included in a stipulated unit and overruled the Petitioner's challenges to their ballots. Under the Caesar's Tahoe test, "If the objective intent of the parties is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement." If the stipulation is ambiguous, the Board next considers the parties' subjective intent and then community of interest factors to determine the unit status of the disputed positions. The stipulation negotiated by the parties identified the classifications included in the unit and specifically included "all full-time and regular part-time . . . coordinators." The Employer did not employ any individuals with the sole designation of "coordinator," but rather several individuals employed in various types of coordinator positions. The Board concluded that the abbreviated reference to "coordinators" in the unit description unambiguously included all coordinators in the unit. [HTML] [PDF]

(Members Liebman and Schaumber participated.)

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Laborers Local 731 (29-CD-601; 352 NLRB No. 20) Staten Island, NY Feb. 15, 2008. The Board in this decision and determination of dispute under Section 10(k) of the Act decided that the employees represented by Laborers Local 731 and Operating Engineers Local 15 are entitled to continue performing the work in dispute. The work constituted "the installation and fusing of high density polyethylene pipe for removal of methane gas from capped landfills at landfills 6 and 7 of the Fresh Kills landfill in Staten Island, NY." The Employer is Tully Construction Co. The work was also claimed by Plumbers Local 1. [HTML] [PDF]

In finding that the dispute was properly before the Board pursuant to Section 10(k), the Board found that there were competing claims to disputed work, that the Laborers used a proscribed means to enforce its claim, and that the parties did not have an agreed upon method for voluntary adjustment of the dispute.

Having found that the dispute was properly before the Board for determination, the Board considered all the relevant factors and found that the employees represented by Laborers and Operating Engineers were entitled to continue performing the work based on the factors of collective-bargaining agreements, employer preference, current assignment, past practice, economy, and efficiency of operations.

In so doing, the Board found that the factors of area and industry practice and relative skills and training did not favor awarding the work to either group of employees.

(Members Liebman and Schaumber participated.)

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National Broadcasting Co., Inc. (2-CA-37396; 352 NLRB No. 15) New York, NY Feb. 14, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the American Federation of Television and Radio Artists (the Union) with relevant information it had requested. In doing so, the Board

affirmed the judge's finding that the information request case was not appropriate for deferral to arbitration. The Board also agreed with the judge that the Respondent failed to establish a confidentiality defense justifying its blanket refusal to supply the information. Because legitimate confidentiality and privacy concerns might exist regarding certain requested information, the Board did not preclude the Respondent, at the compliance stage, from making "a particularized showing" of legitimate and significant confidentiality concerns related to specific information that must be balanced against the Union's need for that information. *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 341 fn. 14 (1995). [HTML] [PDF]

### (Members Liebman and Schaumber participated.)

Charge filed by American Federation of Television and Radio Artists; complaint alleged violations of Section 8(a)(5) and (1). Hearing at New York on Aug. 17, 2006. Adm. Law Judge Steven Fish issued his decision March 5, 2007.

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Stepan Co. (4-CA-34417; 352 NLRB No. 14) Fieldsboro, NJ Feb. 14, 2008. The issue in this case is whether the Respondent, during bargaining negotiations for an initial contract, violated Section 8(a)(5) of the Act by refusing to furnish Electrical Workers [UE] Local 155 (the Union) requested copies of area wage surveys that the Union believed were relied on by the Respondent in fashioning its contractual wage proposals. The complaint also alleged that after the Respondent denied the information request, it violated Section 8(a)(3) and (5) by locking out unit employees. [HTML] [PDF]

The administrative law judge dismissed all of the complaint allegations. He dismissed the information request allegation on two grounds. First, he found that the requested information was not relevant because the Respondent did not rely on the particular wage surveys sought in fashioning its current wage proposals. Second, the judge found that the Union's "requested information was sought solely to support its unfair labor practice charges and for no other reason." 352 NLRB No. 14, slip op. at 10. In this regard, the judge noted that just days before the Union's information request, it had filed Section 8(a)(3) charges alleging, among other things, a discriminatory withholding of promised wage increases, and that some of the information requested by the Region to investigate the charges was the same as that sought by the Union in its information request. Citing *Union-Tribune Publishing Co.*, 307 NLRB 25 (1992), the judge concluded that under these circumstances, the "Respondent was lawfully allowed to refuse to comply with the information request." Id. Because the unlawful lockout allegation hinged on a finding that the refusal to furnish the wage surveys was unlawful, the judge dismissed that allegation as well.

The Board adopted the judge's decision, but relied only on his finding that the requested information was improperly sought in support of the Union's pending Section 8(a)(3) charges. The Board explained in fn. 2 of its decision that "[b]ecause the complaint was properly dismissed on this basis," it was unnecessary to rely on the judge's relevancy finding as an additional basis for dismissing the 8(a)(5) information request allegation.

(Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers [UE] Local 155; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Philadelphia on Nov. 7, 2006. Adm. Law Judge Wallace H. Nations issued his decision Feb. 21, 2007.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Plasterers International and its Local 200* (Standard Drywall, Inc.) Southern California Feb. 11, 2008. 21-CD-659 et al.; JD(SF)-05-08, Judge John J. McCarrick.

*Teamsters Local 249* (Individuals) Chicago, IL Feb. 13, 2008. 6-CB-11375, et al.; JD-08-08, Judge Earl E. Shamwell Jr.

AL & John, Inc. d/b/a Glen Rock Ham (an Individual) Paterson, NJ Feb. 13, 2008. 22-CA-27477; JD(NY)-05-08, Judge Eleanor MacDonald.

*Operating Engineers Local 324 (Hydro Excavating, LLC)* (an Individual) Marine City, MI Feb. 12, 2008. 7-CB-15343; JD(ATL)-07-08, Judge Michael A. Marcionese.

*American Postal Workers Local* 566 (an Individual) Charleston, SC Feb. 13, 2008. 11-CB-3832; JD(ATL)-08-08, Judge George Carson II.

A. Gallo Contractors, Inc. a/k/a A. Gallo Construction, Inc. (Individuals) Philadelphia, PA Feb. 14, 2008. 4-CA-35336, et al.; JD-10-08, Judge David I. Goldman.

Saigon Gourmet Restaurant, Inc. and Saigon Spice, Inc. a single employer d/b/a Saigon Grill Restaurant (318 Restaurant Workers) New York, NY Feb. 14, 2008. 2-CA-38252; JD(NY)-04-08, Judge Raymond P. Green.

Acklin Stamping Co. and Auto Workers Local 12 (an Individual) Toledo, OH Feb. 15, 2008. 8-CA-36788, 8-CB-10622; JD-11-08, Judge Bruce D. Rosenstein.

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### NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

*The Publication Printing Co.* (Trustees of Graphic Arts Pension Plan and Graphic Communications Local 6-505M, Teamsters) (14-CA-29046, 29071; 352 NLRB No. 12) St. Louis, MO Feb. 11, 2008. [HTML] [PDF]

# NO ANSWER/NO COMPLIANCE WITH SETTLEMENT AGREEMENT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's non-compliance with a settlement agreement.)

Smith Industrial Maintenance Corp. d/b/a Quanta (Autoworkers [UAW] West Side Local 174) (7-CA-50189; 352 NLRB No. 13) Taylor, MI Feb. 14, 2008. [HTML] [PDF]

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

### DECISION AND DIRECTION OF SECOND ELECTION

Bergen Funeral Service, Hasbrouck Heights, NJ, 22-RC-12826, Feb. 14, 2008 (Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

*Life University, Inc.*, Marietta, GA, 10-RC-15673, Feb. 15, 2008 (Members Liebman and Schaumber)

Shintech Incorporated, Freeport, TX, 16-RC-10822, Feb. 14, 2008 (Members Liebman and Schaumber)

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### Miscellaneous Board Decisions and Orders

### ORDER DENYING MOTION FOR RECONSIDERATION

Ryder Memorial Hospital, Humacao, PR, 24-RC-8370, Feb. 14, 2008 (Members Liebman and Schaumber)

Puerto Rico Telephone Co., Inc., San Juan, PR, 24-UC-00241, Feb. 12, 2008 (Members Liebman and Schaumber)

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